

Chapter II: Program History & Authority

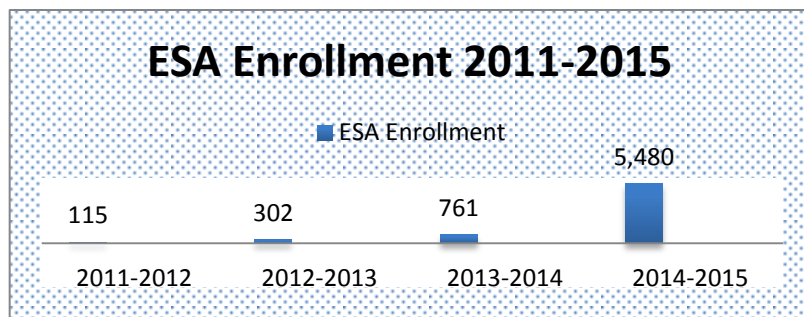
ESA Legislative History

Originally sponsored by Arizona State Senator Rick Murphy, [SB1553](#), then dubbed “Empowerment Accounts”, was an early attempt to expand upon existing school choice measures that have come before it (i.e. open school enrollment, charter schools, School Tuition Tax Credits). The initial bill, as passed in 2011, served only children with special needs. For the first year, the program served approximately 115 Arizona families (\$1.4 Million disbursed) for the 2011-2012 school year with expectations of expanding enrollment as private entities and families seeking educational alternatives became aware of the programs’ existence.

In 2012, the program grew to 302 families (\$5.2 Million disbursed) and the legislature revisited the program making several key changes; the most impactful of these were passed in [HB2622](#), sponsored by Rep. Debbie Lesko, which allowed additional student populations to become eligible for assistance expanding the ESA applicant pool to approximately 215,000 children.

Current Status

There are 761 families receiving the ESA scholarship for School Year 2013-2014 with expected



growth of approximately 4,500 families for School Year 2014-2015. At full capacity ADE will be issuing \$30,000,000- \$50,000,000 to nearly 5,500 Arizona families. [SB1363](#), sponsored by Sen. Rick Murphy and passed this legislative session, will increase annual awards to parents beginning in the 2014-2015 school year, but caps

ESA enrollment until 2019 at approximately 5,500 total students.

*2014-2015 estimated enrollment

Legal History

School voucher programs have been used in various forms since the late 1800’s, but have had mixed legal standing in Arizona (see [Cain v. Horne](#), [Killian v. Kotterman](#)).

The ESA program draws its lineage from other state and national school choice programs, namely school vouchers; but is the ESA program a voucher? Some have argued that it is, based on its similarity to other voucher programs that have preceded it (i.e. The Arizona Scholarships for Pupils with Disabilities). Others maintain it is far more expansive than a voucher and simply opens up

options for parents to freely choose between a wide array of available educational opportunities that have been withheld in traditional public school.

In either case, opponents have stated that the program is unconstitutional based mainly on the following provisions:

Article 2, Section 12, of the Arizona Constitution requires “[n]o public money . . . shall be appropriated to any religious worship, exercise, or instruction, or to the support of any religious establishment.”

Article 9, Section 10, of the Arizona Constitution states that “[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.”

A forerunner of the ESA program, The Arizona Scholarships for Pupils with Disabilities, was struck down by the Arizona Supreme Court because the state directly paid private religious schools chosen by the participating families which violated the “Blaine Amendment” of the constitution. The ESA program differs from its predecessors in that 1) parents are the recipients of state monies and 2) choose from a menu of options, not just the state directly paying private schools; which are two defining factors of a voucher program.

The ESA program is currently under suit awaiting summary judgment from Arizona Court of Appeals where it is expected to be appealed to the Arizona Supreme Court for final ruling. To get the most up-to-date information on the pending case please visit:

<http://apps.supremecourt.az.gov/aacc/1ca/1caattyindex.htm>

What Laws Govern The Program?

A parent should not have to have a law degree to want the best education for their child—this is why the ESA handbook was written. However, it is also meant to serve as a compiled resource of information to empower parents who wish to dive into the more minute details of how the program is governed, ask hard questions and improve outcomes and become informed participants. The following is a collection of state and federal laws that either directly or indirectly affects the ESA program.

State Statute

Attachment 1A – State Statutes	Description
A.R.S. § 15-2401	ESA statute defines key terms and eligibility
A.R.S. § 15-2402	States how a qualified parent may apply and also appropriate uses of the scholarship funds.
A.R.S. § 15-2403	Stipulates administrative rules and oversight of the scholarship by ADE & The Arizona State Treasurer’s Office.
A.R.S. § 15-2404	Sets forth limits of control over non-public institutions by the department and other governmental agencies.
A.R.S. § 15-1401	Defines program eligible postsecondary institutions

<u>A.R.S. § 15-761</u>	Defines state requirements to receive special education services
<u>A.R.S. § 15-763</u>	
<u>A.R.S. § 15-241</u>	Defines “D” and “F” label schools
<u>A.R.S. § 15-891</u>	Arizona scholarships for pupils with disabilities program
<u>A.R.S. § 8-862</u>	Foster care permanency determination
<u>A.R.S. § 15-901</u>	Arizona student funding formula (100 day requirement)
<u>A.R.S. § 43-1505</u>	Defines corporate donations for displaced students and students with disabilities (STO)
<u>A.R.S. § 15-766</u>	Evaluation of child for placement in special education program
<u>Title 43</u>	Taxation and Income. * Applicants may not accept ANY STO pursuant to this title concurrently with an ESA scholarship
<u>A.R.S. § 15-802(B)</u>	Defines state requirements to home school
<u>A.R.S. § 15-943</u>	Provides base support level calculations for funding Arizona students in public school
<u>Title 41, chapter 6, article 10</u>	Delineates Administrative Hearing Code procedure
<u>A.R.S. § 35-113</u>	Defines rules pertaining to budget submissions
<u>A.R.S. § 35-190</u>	Governs lapsing appropriations to state funded agencies and programs

Related Federal Law

Federal law is silent specifically relating to ESA children. However, federal law is applicable when it relates to student privacy, record keeping, special education and a myriad of other provisions.

Attachment 2A – Related Federal Law	Description
<u>29 United States Code section 794</u>	Federal law defining Section 504 Rehabilitation Act
<u>20 United States Code PL 108-446, 20 United States Code</u>	Family Education Rights & Privacy Act (FERPA) Individuals with Disabilities Educational Act (IDEA)
<u>United States Code 26 § 529</u>	Federal college savings program (529 plan)

Related ADE Policies & Procedures

Attachment 3A – Policy & Procedures	Description
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AZ-TAS

Processes and Procedures
From Referral to Determination of
Eligibility

A.R.S. § 15-2403(G)

“The department may adopt rules and
policies necessary for the administration of
empowerment scholarship accounts.”



Quick Recap

- The amounts to ESA recipients will be raised beginning in the 2014-2015 school year.
- ESA is currently under a pending lawsuit that threatens to shut down the program.
- The ESA program is expanding, but a recent cap imposed by SB1363 allows a total enrollment of 5,480 students. Future enrollment may be limited.

ESA Policies Related to this Section

1.0. Changes in ESA award amounts shall be reviewed at the close of each contract year during the contract renewal phase (April-June) for the following contract year only.

1.1 “During 2014, 2015, 2016, 2017, 2018 and 2019, the number of new empowerment scholarship accounts approved by the department of education each year shall not exceed 0.5 per cent of the total number of pupils enrolled in school districts and charter schools in this state during the previous school year.” (A.R.S. 15-2402(3)(a))

*(A cap of 5,480 students shall be imposed for the 2014-2015 school year)

1.2 If applications exceed the total enrollment cap any given year, The Department will withhold the remaining 100 available slots and conduct an enrollment lottery.